

**MINUTES OF THE MILLVILLE
TOWN COUNCIL MEETING
January 14, 2020 @ 7:00 PM**

In attendance were Mayor Steve Maneri, Secretary Ronald Belinko, Treasurer Peter Michel, Council Member Sharon Brienza, Council Member Barbara Ryer, Town Solicitor Seth Thompson, Town Manager Debbie Botchie, and Town Clerk Matt Amerling.

1. CALL MEETING TO ORDER

Mayor Steve Maneri called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. ROLL CALL

Mayor Steve Maneri stated everyone was present.

4. ADOPTION OF TOWN COUNCIL MINUTES AND NOTES

A. Adoption of Town Council Minutes – December 10, 2019

Council Member Sharon Brienza motioned to adopt the December 10, 2019, Town Council minutes and commends Town Clerk Matt Amerling for doing such a great job. Secretary Ronald Belinko seconded the motion. Motion carried 5-0.

5. FINANCIAL REPORT – Treasurer Peter Michel

A. December 2019

Treasurer Peter Michel read the Financial Report for the month ending 12/31/19.

December 31, 2019:

General Revenue:	\$ 45,985.	Restricted Revenue:	\$ 122,387.
General Expenses:	45,441.	Restricted Expenses:	229,619.

6. ADMINISTRATIVE MATTERS

A. Administrative Report for December 2019

Town Manager Debbie Botchie stated she wants to give a big kudos to Town Clerk Matt Amerling who had the task of scanning all of the Town's documents which are in each property parcel folder, into the Town's software. Ms. Botchie stated it took about a little over a year to scan everything in.

Council Member Sharon Brienza stated her kudos to Mr. Amerling as well because she knows what a monumental task it is and how much time it takes to do such a task.

7. NEW BUSINESS

A. Discuss and possible vote on revisions to the FY20 Budget – Town Manager Debbie

Botchie & Finance Director Lisa Wynn

Town Finance Director Lisa Wynn stated the Sussex County Law Enforcement revenue sharing grant was upped by the County, so the Town increased the revenue item and the expense item for it. Ms. Wynn stated regarding the impact fees on the Millville Volunteer Fire Company (MVFC), the Town doesn't always know what to budget for it because it is an impact fee based on each new home which is built; so the Town wants to increase it by eighty-thousand dollars (\$80,000). Ms. Wynn stated the MVFC ambulance fee – which is the annual thirty-five dollar (\$35) fee per household – is a two-hundred-fifty dollar (\$250) increase just to match the actual numbers. Ms. Wynn stated on the expense side, the Town has office supplies which is an increase of five-hundred dollars (\$500) due to not budgeting for purchasing checks for two (2) of the Town's general accounts and economic development account. Ms. Wynn stated the Town would like to increase postage by one-thousand dollars (\$1000) due to more certified letters going out for property violations, and Town Code & Building Administrator Robin Caporaletti has been doing a great job keeping up with the violations. Ms. Wynn stated the professional services would be increased by eight-thousand-five-hundred dollars (\$8500) due to more infrastructural inspections. Ms. Wynn stated service charges are what Fulton Bank charges the Town for each property transfer and the Town is more conservative on the revenue side of it and it reflects on the expense, so Fulton charges the Town a certain percentage of the income the Town has in transfer tax; so the Town would like to increase it by seven-thousand-nine-hundred-forty dollars (\$7940). Ms. Wynn stated the ambulance fee collected, which is the thirty-five dollars (\$35), the Town would like to adjust it to actual which is two-hundred-forty-five dollars (\$245). Ms. Wynn stated regarding building improvements, there was a problem with mold in the new Town Hall building and some duct repair, so the Town would like to increase it to eleven-thousand dollars (\$11,000), and the number should be good because the Town got some estimates on the work needed. Ms. Wynn stated with capital furniture/equipment, the Town purchased new phones and system for Town Hall due to the systems being so old (installed in 2004). Ms. Wynn stated the revenue sharing is the other side of the Sussex County grant, so this is the expense. Ms. Wynn stated the last item is the MVFC grant reimbursement and the Town doesn't know what the MVFC will request, so there wasn't anything budgeted, and the Town is still awaiting word from the MVFC.

Secretary Ronald Belinko motioned to approve the revisions to the FY20 budget. Council Member Barbara Ryer seconded the motion. Motion carried 5-0.

- B.** Discuss and possible vote on Ordinance 20-06. Synopsis: If approved, Ordinance 20-06 will amend the Town of Millville Code to add a new Chapter 93, entitled "Littering," to establish a comprehensive program within the Town to control litter.

Town Manager Debbie Botchie stated it has been brought to Council's attention many times about the litter problem in the area and there are some residents who go out very early to pick up litter most days if not every day. Ms. Botchie stated resident Dave Moeller always gives Ms. Botchie a "heads up" as to certain areas where the amount is too much for him to pick up or frequent problem areas. Ms. Botchie stated the Town is also seeing a

lot of vehicles with flatbeds full of trash which are not covered with tarps and the litter falls out of those. Ms. Botchie stated the Town is hoping with this ordinance as well as signage come the next budget year, the Town will be proactive; and the Delaware State Police (DSP) will start to help out the Town when they're out on patrols, especially with the vehicles which aren't covered. Ms. Botchie stated she spoke with Governor Carney last week about his campaign to "keep Delaware litter-free" and how a lot of us down here feel it's not enough and there's nothing being done about it. Ms. Botchie stated this is new for the Town but it is an ordinance so it can be amended any time.

Town Solicitor Seth Thompson stated this is a new chapter in the Town Code, including the purpose for the ordinance, definitions, the general prohibition on littering, there are specific requirements related to loads and vehicles, and requirements with handbills. Mr. Thompson stated there is a penalty section, and it's the general penalty from Chapter 1, Article 2, with the first offense being ninety-nine dollars (\$99) and any subsequent offense being up to two-hundred-fifty dollars (\$250). Mr. Thompson stated, for comparison, he looked at the State Code on its littering and the State has a fine for the first offense of not greater than fifty dollars (\$50) but you could also get up to eight (8) hours of community service, and any subsequent offense is seventy-five dollars (\$75) and up to twenty-five (25) hours of community service. Mr. Thompson stated the way it works is if a police officer sees someone littering, they can site the person under the State Code if they want or site them under the Town ordinance. Mr. Thompson stated if the DSP sites the person under State Code, the Town doesn't prosecute that case; but if the DSP does site the person under the Town ordinance, the Town is responsible for prosecuting. Mr. Thompson stated Ms. Botchie forwarded an email from Mr. Moeller to Mr. Thompson, and he wanted to address a couple of questions. Mr. Thompson stated the Town set up a general penalty which applies to most violations, unless Council decides to set a specific penalty for a specific offense. Mr. Thompson stated under Chapter 1, Article 2, the term "person" is defined to include artificial entities, so it says "person" includes "corporations, companies, associations, firms, partnerships, societies and joint-stock companies, as well as individuals." Mr. Thompson stated this is why he didn't include a definition of "person" in this new chapter, but the Town can add a definition to this chapter or do it by cross-reference. Mr. Thompson stated there was a question with regard to if something comes out of a moving vehicle, so Mr. Thompson compared the Town's ordinance to what currently exists under State law, which refers to "throwing, depositing, dropping or dumping litter" and it also references "permitting the depositing, placing, throwing, or leaving of litter." Mr. Thompson further stated he gathers permitting is how they cite the person who may be driving the vehicle when the passenger is the one who litters. Mr. Thompson stated it's easy to add that language if it is what Council wants to do. Mr. Thompson stated the other thing the State does is they can set up prima facie evidence, meaning there's a rebuttable presumption that if litter comes out of a vehicle, the owner is the one who is presumed to be responsible unless the owner shows up and explains in a convincing manner why someone else was driving the vehicle. Mr. Thompson stated the Town could do this also and it's up to Council if they want to add that element the State uses. Mr. Thompson stated the State sets up if the identity of the operator is not discernable – meaning no one will confess as to who was driving – the presumption remains with the registered owner as the one who's responsible. Mr. Belinko stated it's almost like how in

some states the driver is responsible for passengers not buckled in. Mr. Thompson stated it is an interesting legal concept because we don't often make people responsible for other people except their minor children because it gets a little difficult, but if you're the one who owns the vehicle or is operating the vehicle, it makes it a bit easier.

Ms. Jeanne Smith, of Pembroke Lane, stated this is a great idea but who will enforce all of this when the DSP are only here a few days? Mr. Thompson stated the State law says all law enforcement agencies, including the Delaware Division of Natural Resources and Environmental Control (DNREC), are capable of enforcing the State law. Mr. Thompson stated in terms of the Town ordinance, we have the DSP to do patrols and cite for the Town's ordinances, as well as the Town's Code enforcement.

Mr. Dave Moeller, of Blue Heron Drive, stated holding the commercial entity and/or the driver responsible as well as the perpetrator – the concept there is to apply a little additional pressure, so if, for instance, the driver and passenger both eat lunch in the truck and dump it out the side, they can both be fined. Mr. Thompson stated yes, multiple people can be held responsible for one act of littering. Mr. Moeller asked if the Town can implement penalty and fines which are of a high magnitude or stricter than what the State does. Mr. Thompson stated the fining structure can be different from the Town because the Town is allowed to regulate conduct in a more stringent manner; for instance, the Town could make an ordinance for blood alcohol levels, such as someone can't drive if they're a point-zero-six (.06) instead of point-zero-eight (.08) because it's more restrictive. Mr. Thompson stated the one caveat to it is if the State uses its preemptive powers and told towns "no, you're not allowed to do this" – just like with firearms and how the Town is only allowed to regulate the discharge but cannot regulate the sale or anything like it. Mr. Moeller stated he printed out a fact sheet of fines by each state and Delaware is probably the weakest of all of them. Mr. Moeller further stated the strictest is Massachusetts, which upon the first conviction is a fine of up to five-thousand-five-hundred dollars (\$5500) and the second conviction is up to fifteen-thousand dollars (\$15,000); so it's just like the drunk driving ads saying "you can't afford this," and the same concept could go with littering. Mr. Thompson stated he knows Mr. Moeller mentioned construction sites, and the easiest way to think of littering is if the non-property owner has been depositing trash, in terms of a construction site, the owner of that property is going to be responsible for the property maintenance; so if a construction site is a mess, we're probably not going to cite someone for littering. Mr. Moeller stated if you go down Route 17, past the hospital site, you'll see in the ditch a bunch of debris, which looks like a bunch of packaging things, and even though Mr. Moeller wasn't there, you can surmise it is some kind of construction debris and if they're not cleaning it up, it's litter. Mr. Thompson stated he thinks catching closer to when it's deposited falls under property maintenance and the development agreements call for them to clean up. Ms. Botchie stated yes, the development agreements do, but this entity did not sign a development agreement, and they say their workers didn't do it; however, there is outsourcing of work and if they're doing it, clean it up. Mr. Thompson stated if it's an active development, Mr. Thompson thinks it's easier to put the onus on the developer using the development agreement to enforce the cleaning – just like construction vehicles using a regular entrance instead of the construction entrance, and we realize the developer is not driving the vehicle, however, the developer has the ability to go to the guy

driving the truck and tell him to use the construction entrance. Mr. Moeller stated he thinks mandatory community service would be better than a monetary fine because most people don't mind paying money but they don't want to give up their time. Mr. Thompson stated the difficulty there is the State law does allow for the community service to be ordered by the court, but the Town's basic penalties are only incarceration – even though we don't have a Town jail – or fines. Ms. Botchie stated the fines the Town charges is ninety-nine dollars (\$99) for the first offense and two-hundred-fifty dollars (\$250) for the next, so any signage the Town gets can only say \$250. Mr. Moeller stated the sign could also read “possible community service” since that's done under the State and the DSP could fine them per the State. Mr. Thompson stated as long as it's not misleading and making people think the community service is under the Town ordinance. Mr. Moeller stated the enforcement question is a good one but he thinks the Town “needs to draw a line in the sand” and this whole thing with litter is going to be a series of incremental steps, and it's great Millville is trying to get in front of this.

Ms. Botchie stated as far as the language for this ordinance, there is something to think about regarding language if anyone in your vehicle litters. Mr. Thompson stated we can change the ordinance to mirror the State language, which states it's “unlawful for a person to throw away, deposit, leave, or cause or permit the depositing of litter.” Ms. Botchie stated she thinks the driver should be held responsible for anyone throwing litter from their vehicle. Mr. Thompson stated there is another presumption that if you don't know the identity of the (vehicle) operator, the presumption is the registered owner of the vehicle was the operator.

Council Member Barbara Ryer asked, regarding the handbill section, would it be a good idea to notify stores about their advertisements and having them put up a sign for people not to leave their advertisements/coupons in their shopping carts because they blow out of the cart and litter the area? Ms. Botchie stated the Town has already come up with a decision which she needed to ask if it was legal to do, to ask these stores to put a structure up and have customers take their advertisements and put them in the structure before they leave the building. Mr. Thompson stated you can always ask but you can't make them. Ms. Ryer asked if the store would be fined. Mr. Thompson stated the way the ordinance says, the person – even a company – would have to be the one to distribute or causes it. Mayor Steve Maneri stated they did cause it by distributing the advertisements, but it is a good idea to ask them to put up the structure like Ms. Botchie suggested. Ms. Botchie asked if the Town could cite the store company for causing the litter due to them handing out the advertisements. Mr. Thompson stated we could probably do something to more specifically address that issue, and we're talking about how when someone hands out the handbills at the door, the handbills need to be reasonably fastened, and maybe we could do something that if handbills are distributed, there will be someone to pick them up. Mr. Thompson stated we can also pass some kind of ordinance requiring stores to have a recycling bin for bags. Ms. Botchie stated we can certainly “go back to the drawing board” on this ordinance. Mr. Moeller asked if it's possible to require commercial entities to put out garbage receptacles. Mr. Thompson stated yes as he doesn't think there's a preemption element to it. Mr. Moeller stated he understands Hocker's is not in Millville, but people go in and get their lunch, come out to eat the lunch in their vehicle and leave the trash on the

parking lot ground, and if it was required to have a trash receptacle out there, maybe people wouldn't leave their trash on the ground. Council Member Sharon Brienza stated no, there are receptacles out there and people still do it anyway. Council stated there are trash receptacles out there. Mr. Belinko stated Giant Food, Hocker's, Dollar General, Weis all have trash receptacles but it's forcing people to actually throw away their trash which is the bottom line. Mayor Maneri stated we will hold onto this for the next meeting.

Ms. Ryer motioned to table Ordinance 20-06 until the next meeting. Mr. Michel seconded the motion. Motion carried 5-0.

8. CITIZENS' PRIVILEGE

Mr. David Van Stone, of Brandywine Drive, stated he is also serving as the chairman of the Bishop's Landing Architectural Review Committee (ARC), but is here tonight mostly as a resident. Mr. Van Stone stated his reason for being here tonight is the Town's Code Chapter 155-17, entitled Appurtenances and there are two parts to it, Part A and Part B. Mr. Van Stone stated Part A reads "No part of a building shall be erected within or shall project into the front and rear yard setback areas except" and there are five (5) individual items, which number five (5), which was amended January 9, 2018, to read "paver patios may encroach no more than half the distance from the rear yard setback to the rear property line." Mr. Van Stone stated Part B of the ordinance, which is what Mr. Van Stone is referencing tonight, states "[n]o part of a building shall be erected within nor project into any side yard setback area, except cornices, eaves, gutters or chimneys projecting not more than 18 inches." Mr. Van Stone stated he is here tonight to request a similar consideration to what he read in Part A, to review Part B as it relates to sidewalks in the side yard. Mr. Van Stone stated he has spoken to Ms. Botchie and Town Code & Building Official Eric Evans many times and he's always gotten tremendous reception, cooperation and discussion from both. Mr. Van Stone stated he understands there may already be some consideration of this topic and he doesn't want to be redundant but he would like to take this opportunity to lend support for reevaluation of this ordinance.

Mr. Van Stone stated he first became aware of the limitations imposed by the subject ordinance two (2) years ago when seeking permits for a paver patio and sidewalk on his own Bishop's Landing property. Mr. Van Stone stated a few months after settling in Bishop's Landing, his wife had a stroke and was left paralyzed on her right side. Mr. Van Stone further stated in order to get wheelchair access around to the back of the house, where he was going to put a ramp in, he saw sought a permit to have a paver sidewalk installed to the rear entrance. Mr. Van Stone stated while this plan was acceptable to the Bishop's Landing homeowners' association (HOA) and to Sussex County – which doesn't require permits for side sidewalks – Mr. Van Stone was disappointed to find the proposed sidewalk would not be approved by the Town of Millville because of the seven (7)-foot setback required by this ordinance, despite it only encroaching by six (6) inches. Mr. Van Stone stated it was through this process and talking to Mr. Evans that Mr. Van Stone found out a resident can apply for a variance to be reviewed by the Town Board of Adjustment (BOA). Mr. Van Stone further stated he learned at that time the application process would require a special meeting of the BOA, a seven-hundred-fifty dollar (\$750) application fee, fifteen-hundred dollars (\$1500) in escrow for attorneys and engineer study, a public

hearing posting the size, and all of this with little likelihood of it being approved if the hardship couldn't be demonstrated. Mr. Van Stone stated he had decided to fill out the application for the variance but realized this process would be more stress on his wife than it was worth to go through this issue. Mr. Van Stone stated the bar seems to be set extraordinarily high just to be heard with no real assurance or guarantee of approval. Mr. Van Stone stated last month, in his position as ARC chairman, an application came before the committee for a walkway to extend from the front of a house, along the side and to the back of the house. Mr. Van Stone stated because of his awareness, he realized the sidewalk on the side would encroach in the seven (7)-foot setback, so he informed the applicant although the ARC could approve it, it was unlikely to be approved by the Town. Mr. Van Stone stated when the applicant informed Mr. Van Stone the reason she was requesting the walkway – her spouse has a debilitating disease which makes it extremely difficult for him to walk and a wheelchair would be needed – Mr. Van Stone was empathetic to her plight and it struck a chord with him on this issue, which is why he's here this evening. Mr. Van Stone further stated while Bishop's Landing, like many developments in Millville, is not age restricted, many of the settlers to Millville are already or soon-to-be qualifying for Medicare, and the influx of new residents to Bishop's Landing and the Town of Millville is "decidedly skewing senior." Mr. Van Stone stated many good neighbors he's met in Bishop's Landing have moved here, as they tell him, with the intention this home will be their last. Mr. Van Stone stated none of us are getting any younger and with the intention in place, residents are taking steps to ensure their safety and accessibility for "the long haul." Mr. Van Stone stated their ARC is seeing applications at an increasing rate to install safety-related items, so airing on the side of caution, even if the aesthetics would not be what we like, the ARC tend to be approving such applications.

Mr. Van Stone stated the Bishop's Landing HOA and ARC shares the Town's concerns for preservation of green space and is likewise concerned with the impact of – and need to control – runoff and drainage issues exacerbated by the proliferation of hard, impervious surfaces. Mr. Van Stone stated with the proper oversight, however, he thinks these issues can be managed. Mr. Van Stone stated as an HOA, they are equally concerned with the need to ensure the health and mobility of an aging population. Mr. Van Stone stated with the intent to provide secure footing and Americans with Disabilities Act (ADA) accessibility as residents become less mobile or time as they age in place, the need for secure surfaces under foot and wheelchair accessibility will become an increasingly higher priority. Mr. Van Stone stated he is requesting Council take under consideration the proposal that flatscape paver sidewalks be considered separately from other structures with respect to setback restrictions on the side. Mr. Van Stone stated he is not proposing any specific solution or amendment at this time, but rather requesting the Town be open for review a discussion with the BOA for the purpose of evaluating whether an amendment to the ordinance regarding side setbacks is warranted. Mr. Van Stone stated he would happily participate in any workshop the Town might engage in which would include discussion of the topic and thank you for your consideration.

Ms. Botchie stated Mr. Van Stone is correct regarding the Town having more and more residents who are disabled or needing the use of wheelchairs or walkers. Ms. Botchie stated there is issue with the sidewalks in the side yard setbacks, so Mr. Evans and Ms. Botchie have been drafting language for an ordinance which hopefully Council will take

into consideration at the next meeting. Ms. Brienza asked if there are any ADA regulations which would permit things like this. Mr. Thompson stated basically, reasonable accommodations need to be made, and the ADA requires towns to have ordinances which permit reasonable accommodations such as allowing space for a ramp to lead up to a house entrance in the front and/or back. Mr. Belinko stated he knows of a neighbor a few doors down whose husband has a debilitating disease and will require a side walkway, and she is in tears every time talking about the situation. Town Clerk Matt Amerling stated he can say as someone who deals with residents when they come in and apply for building permits, this issue is increasing more and more as residents get older and unfortunately more infirm; and Mr. Amerling applauds Mr. Van Stone for his approaching the Town. Mayor Maneri asked Ms. Botchie if she's looking into this now. Ms. Botchie stated yes, she already has the language drafted and is putting it in ordinance form for Council review. Ms. Botchie stated the Town is getting its whole zoning ordinance revamped, and when that happens, the whole zoning code will go to the Town Planning & Zoning Commission (P&Z). Mr. Thompson stated the BOA is for allowing some variance of the zoning code which exists under exceptional practical difficulties or unnecessary hardships; and he understands Mr. Van Stone's point that you wouldn't want to lay out all the money if you're not guaranteed a result, but the difficulty is the Town could never guarantee a result ahead of time. Mr. Thompson stated the only way to address an issue such as this so someone doesn't have to go to the BOA, is through the Town's zoning code. Mr. Thompson stated the Town does have a difficult position of having to balance public interest with respect to avoiding impervious surfaces, while also allowing people to have access. Mayor Maneri asked if they could look over Ms. Botchie's language at the next meeting. Ms. Botchie stated yes. Council thanked Mr. Van Stone for his presentation.

9. ANNOUNCEMENT OF NEXT MEETING - Town Council Workshop Mtg., January 28, 2020

10. ADJOURNMENT

Ms. Brienza motioned to adjourn at 7:47 p.m. Mr. Michel seconded the motion. Motion carried 5-0.

Respectfully submitted,
Matt Amerling, Town Clerk